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9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. R-2106

13 GLENN GARCIA MADRID, R.C.P.
14 17123 Big Oak Lane
Yorba Linda, CA 92886

OAH No.

A C C U S A T I O N

15 Respiratory Care Practitioner License No. 19150

16 Respondent.

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18 Complainant alleges:

19 PARTIES

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Respiratory Care Board of California,
22 Department of Consumer Affairs.

23 2. On or about January 7, 1997, the Respiratory Care Board issued
24 Respiratory Care Practitioner License No. 19150 to GLENN GARCIA MADRID, R.C.P.
25 (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on February 29, 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“....”

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“....”

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

“....”

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

“(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible

1 entries in any patient, hospital, or other record.

2 “....”

3 7. Section 3752 of the Code states:

4 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
5 made to a charge of any offense which substantially relates to the qualifications,
6 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
7 the meaning of this article. The board shall order the license suspended or revoked, or
8 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
9 conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section
11 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
12 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
13 accusation, information, or indictment.”

14 8. California Code of Regulations, title 16, section 1399.370, states:

15 “For the purposes of denial, suspension, or revocation of a license, a crime or act
16 shall be considered to be substantially related to the qualifications, functions or duties of
17 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
18 perform the functions authorized by his or her license or in a manner inconsistent with the
19 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
20 those involving the following:

21 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
22 abetting the violation of or conspiring to violate any provision or term of the Act.

23 “(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

24 “....”

25 COST RECOVERY

26 9. Section 3753.5, subdivision (a) of the Code states:

27 "In any order issued in resolution of a disciplinary proceeding before the board,
28 the board or the administrative law judge may direct any practitioner or applicant found to have

1 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
2 investigation and prosecution of the case."

3 10. Section 3753.7 of the Code states:

4 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
5 include attorney general or other prosecuting attorney fees, expert witness fees, and other
6 administrative, filing, and service fees."

7 11. Section 3753.1 of the Code states:

8 "(a) An administrative disciplinary decision imposing terms of probation may
9 include, among other things, a requirement that the licensee-probationer pay the monetary costs
10 associated with monitoring the probation. "

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Conviction of Crimes)**

13 12. Respondent is subject to disciplinary action under section 3750, as defined
14 by sections 3750, subdivisions (d) and (g), and 3752, in that he was convicted of crimes
15 substantially related to the qualifications, functions, or duties of a respiratory care practitioner.
16 The circumstances are as follows:

17 (A) On or about February 14, 2007, an indictment was filed in the case of
18 *United States of America v. Lessler et al.*, United States District Court, Central District Court of
19 California, Case Number 8:07-cr-00021-JVS-9.

20 (B) The indictment alleged that respondent and others conspired to defraud
21 Medicare. Specifically, respondent was alleged to have engaged in the following acts:

22 (i) Respondent was paid illegal kickbacks to recruit elderly,
23 infirm, and mentally ill residents at board and care facilities for respiratory
24 treatments, by various licensed physicians and surgeons, who conspired to defraud
25 Medicare.

26 (ii) As part of his efforts to recruit elderly, infirm, and mentally
27 ill residents at board and care facilities for respiratory treatments, respondent paid
28 illegal kickbacks to the owners and administrators of the board and care facilities

1 in exchange for their referrals of elderly, infirm, and mentally ill residents for
2 respiratory treatments. Specifically, in or around 2003 and 2004, respondent paid
3 cash to the owner of one board and care facility for referring elderly, infirm, and
4 mentally ill residents for respiratory treatments.

5 (iii) Respondent provided kickbacks to the elderly, infirm, and
6 mentally ill residents of the board and care facilities in order to entice them to
7 undergo the respiratory treatments.

8 (iv) The respiratory treatments included, among others, aerosol
9 inhalations for sputum mobilization and manipulation of the chest wall to
10 facilitate lung function.

11 (v) On or about the following dates, respondent conspired with
12 others to cause fraudulent claims for respiratory treatments for numerous patients
13 to be submitted to Medicare:

- 14 (a) October 16, 2002
- 15 (b) October 18, 2002
- 16 (c) December 31, 2002
- 17 (d) March 27, 2003
- 18 (e) March 31, 2003
- 19 (f) April 8, 2003
- 20 (g) May 26, 2003
- 21 (h) June 27, 2003
- 22 (i) July 31, 2003
- 23 (j) September 12, 2003
- 24 (k) October 15, 2003
- 25 (l) December 29, 2003
- 26 (m) March 7, 2004
- 27 (n) March 8, 2004

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1 (vi) On or about the following dates, respondent was paid
2 certain amounts of money for the referrals of elderly, infirm, and mentally ill
3 patients from board and care facilities:

- 4 (a) November 26, 2003
5 (b) April 25, 2003
6 (c) April 6, 2004
7 (d) April 24, 2003
8 (e) April 29, 2003
9 (f) December 19, 2003

10 (C) On or about June 19, 2007, respondent pled guilty to Counts 1 and 2 of the
11 indictment. Specifically, respondent pled guilty to violating 18 U.S.C. § 371 [Conspiracy], and
12 18 U.S.C. §§ 1347 [Health Care Fraud] and 2 [Aiding and Abetting/Causing An Act To Be
13 Done].

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Fraudulent, Dishonest, and/or Corrupt Acts)**

16 13. Respondent is subject to disciplinary action under section 3750, as defined
17 by section 3750, subdivision (j), in that he committed fraudulent, dishonest, and/or corrupt acts,
18 substantially related to the qualifications, functions, or duties of a respiratory care practitioner, as
19 more particularly alleged in Paragraph 12, above, which is hereby incorporated by reference.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking or suspending Respiratory Care Practitioner License No.19150,
5 issued to Glenn Garcia Madrid, R.C.P.;

6 2. Ordering Glenn Garcia Madrid, R.C.P. to pay the Respiratory Care Board
7 the costs of the investigation and enforcement of this case, and if placed on probation, the costs
8 of probation monitoring; and

9 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: September 26, 2007

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15 Original signed by Liane Zimmerman for:
16 STEPHANIE NUNEZ
17 Executive Officer
18 Respiratory Care Board of California
19 Department of Consumer Affairs
20 State of California
21 Complainant
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